Supreme Court, U.S.
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No. 00-688

In The

Supreme Court of the United States

Alexandria Resident Council, Inc.,
Petitioner,

Alexandria Redevelopment and Housing Authority,
Respondent,

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MICHAEL J. WEISER
ATTORNEY AT LAW
510 KING STREET
SUITE 416
ALEXANDRIA, VIRGINIA 22314
(703) 836-7003
VSB #17630

Counsel for Respondent

15 pp

QUESTION PRESENTED

Whether the Fourth Circuit Court of Appeals properly interpreted and applied this Court's ruling in *Peacock v. Thomas*, 516 U.S. 349 (1996)?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLAIMER STATEMENT

Petitioner

The Alexandria Resident Council, Inc. has no parent company or nonwholly owned subsidiary company.

Respondent

The Alexandria Redevelopment and Housing Authority has no parent corporation, nor does any publicly held company own ten percent (10%) or more of Respondent's stock.

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Peacock v. Thomas, 516 U.S. 349, 116 S.Ct. 862, 133 L.Ed.2d 817 (1996) i,7,8,9,10

REGULATIONS:

24 C.F.R. §964.115 1,2,5,6,7,8

24 C.F.R. §970.13 2,3,4,5,6,7,8

STATUTORY PROVISIONS

24 C.F.R. §964.115 Resident council requirements.

A resident council shall consist of persons residing in public housing and must meet each of the following requirements in order to receive official recognition from the HA/HUD, and be eligible to receive funds for resident council activities, and stipends for officers for their related costs for volunteer work in public housing:

(a) It may represent residents residing:

(1) In scattered site buildings;

(2) In areas of contiguous row houses; or

(3) In one or more contiguous buildings;

(4) in a development; or

(5) In a combination of these buildings or developments.

(b) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to be the governing board by the voting membership of the residents residing in public housing, described in paragraph (b) of this section, on a regular basis but at least once every three (3) years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the number of percentage of voting membership ("threshold") who must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(c) It must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five (5) selected board members.

The voting membership must consist of heads of households (any age) and other residents at least 18 years of age or older and whose name appears on a lease for the unit in the public housing that the resident council represents.

24 C.F.R. §970.13 Resident organization opportunity to purchase

(e) *PHA Review of Proposals.* The PHA has up to 60 days from the date of receipt of the proposal(s) to review them and determine whether they meet the terms of sale set forth in its offer. If the resident management corporation, resident council or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than the fair market value with demonstrated commensurate public benefit or for the purposes of homeownership), the PHA may consider accepting the offer. If the terms of sale are met within 14 days of the PHA's final decision, the PHA shall notify the resident management corporation, resident council or resident cooperative of the affected development of that fact and that the proposal has been accepted or rejected.

(f) *Appeals.* The resident management corporation, resident council or resident cooperative of the affected development has the right to appeal the PHA's decision to the HUD field office. A letter requesting an appeal has to be made within 30 days of the decision by the PHA. The request should include copies of the proposal and any related correspondence. The field office will render a final decision within 30 days. A letter communicating the decision is to be prepared and sent to the PHA and the resident management corporation, resident council or resident cooperative of the affected development.

(g) *Contents of Proposal.* (1) The proposal from the resident management corporation, resident council or resident cooperative of the affected development shall at a minimum include the following:

(i) The length of time the organization has been in existence;

(ii) A description of current or past activities which demonstrate the organization's organizational and management capability or the planned acquisition of such capability through a partner or other outside entities;

(iii) A statement of financial capability;

(iv) A description of involvement of any non-resident organization (non-profit, for profit, governmental or other entities), if any, the proposed division of responsibilities between these two, and the non-resident organization's financial capabilities;

(v) A plan for financing the purchase of the property and a firm commitment for funding resources necessary to purchase the property and pay for any necessary repairs;

(vi) A plan for the use of the property;

(vii) The proposed purchase price in relation to the appraised value;

(viii) Justification for purchase at less than the fair market value in accordance with §970.9, if appropriate;

(ix) Estimated time schedule for completing the transaction;

(x) The response to the PHA's terms of sale;

(xi) A resolution from the resident organization approving the proposal; and

(xii) A proposed date of settlement, generally not to exceed six months from the date of PHA approval of the proposal, or such period as the PHA may determine to be reasonable.

(h) *PHA obligations.* (1) Prepare and disperse the formal offer of sale to the resident council, resident management corporation and resident cooperative of the affected development.

(2) Evaluate proposals received and make the selection based on the considerations set forth in paragraph (b) of this section. Issuance of letters of acceptance and rejection.

(3) Prepare certifications, where appropriate, as discussed in paragraph (i)(3) of this section.

(4) The PHA shall comply with its obligations under §970.4(a) regarding tenant consultation and provide evidence to HUD that it has met those obligations. The PHA shall not act in an arbitrary manner and shall give full and fair consideration to any qualified resident management corporation, resident council or resident cooperative of the affected development and accept the proposal if it meets the terms of sale.

STATEMENT OF THE CASE

The initial case was filed by the Alexandria Resident Council, Inc. ("ARC") requesting the District Court to declare it the "...recognized and duly elected resident council..." for the residents of a public housing project owned and to be redeveloped by the Alexandria Redevelopment and Housing Authority ("ARHA") pursuant to 24 C.F.R. §964.115.

On September 24, 1997 the District Court granted ARC's Motion for Summary Judgment and entered an Order wherein it found ARC to be the resident council for the tenants at the affected project. (App. to Pet. for Cert., 53a, erroneously listed as "Filed November 24, 1997) On July 22, 1998, the Court of Appeals for the Fourth Circuit affirmed the District Court's finding that ARC was the resident council for the affected project by an unpublished *per curiam* opinion. (App. to Pet. for Cert., 9a)

On June 18, 1998 the District Court entered an Order requiring ARHA to "...issue to plaintiff ARC a formal offer for sale of the Samuel Madden Homes (Downtown) in full compliance with 24 C.F.R. §970.13." (App. to Pet. for Cert., 33a) In full compliance with the Court's directive, ARHA submitted an offer to purchase to ARC to which ARC submitted its proposal to purchase. This proposal was rejected by ARHA. (App. to Pet. for Cert., 3a)

On December 3, 1998 ARC filed a Rule to Show Cause requesting the District Court order ARHA to accept its offer to purchase. On December 23, 1998 rather than granting the relief requested by ARC, the District Court ordered ARC to pursue its appeal rights to the United States

Department of Housing and Urban Development ("HUD") pursuant to 24 C.F.R. §970.13(f). (App. to Pet. for Cert., 31a)

HUD determined that the ARC proposal did not contain a firm financial commitment as required by 24 C.F.R. §§970.13(d)(i)(vii) and 970.13(g)(1)(v) and allowed ARC an additional ninety (90) days to provide a firm financial commitment for funding. (App. to Pet. for Cert., 58a)

On August 18, 1999 ARC filed a Rule to Show Cause requesting the District Court to Order ARHA *inter alia* "...to accept ARC's firm financial commitment and ARC's offer to purchase..." ARHA filed its opposition thereto due to ARC's failure to again provide a firm financial commitment as required by HUD regulations. On September 3, 1999 the District Court continued the case for review of ARC's last minute submission filed in open court during the hearing.

On November 12, 1999 the District Court set aside ARHA's rejection of the ARC proposal and required "...that ARHA accept such proposal and [further] ORDERED that the defendant begin forthwith to negotiate the specific terms of the project with plaintiff..." (App. to Pet. for Cert., 28a)

ARGUMENT IN OPPOSITION TO WRIT

ARC filed its Complaint requesting the District Court to declare that it "is the recognized and duly elected resident council for all the public housing residents in the City of Alexandria..." On September 24, 1997 the District Court granted the relief sought by ARC, ordering that

"ARHA recognize the Alexandria Resident Council ("ARC") as the duly elected resident council for the downtown Samuel Madden Homes (App. to Pet. for Cert., 54a). This decision was affirmed by the Fourth Circuit Court of Appeals on July 22, 1998 (App. to Pet. for Cert., 9a). At that point the case was final and ended, ARHA having fully complied with the District Court's Order.

The determination of 1.) ARC's status as a resident council under 24 C.F.R. §964.115 and 2.) if it was the resident council at the affected development were the bases of the original lawsuit. The determination of whether or not ARC's proposal met the requirements necessary to purchase the property in question turns on entirely different operative facts and regulatory standards set forth in 24 C.F.R. §970.13. The District Court determined that ARC was entitled to receive the offer to purchase as the resident council at the affected project. The Court of Appeals accurately determined that the claims made subsequent to ARC's having received the offer were factually independent from the claims of the primary lawsuit and hence beyond the jurisdiction of the District Court. (App. to Pet. for Cert., 4a-8a)

The issues relative to ARC's status as the resident council have nothing whatsoever to do with its ability, financial and otherwise, to purchase and develop the property in question. More accurately, the ability of ARC's development partner, Telesis Corporation, to successfully complete the project was the crucial issue of the post-judgment proceedings.

The Court of Appeals accurately applied the standard set forth in *Peacock v. Thomas*, 516 U.S. 349, 116

S.Ct. 862, 133 L.Ed.2d 817 (1996), wherein this Court stated that "But once judgment was entered in the original ERISA suit, the ability to resolve simultaneously factually intertwined issues vanished." This Court went on to find that "In any event, there is insufficient factual dependence between the claims raised in Thomas' first and second suits to justify the extension of ancillary jurisdiction." *Peacock*, 516 U.S. at 355. The original issues and the post-judgment issues in the case before the District Court were not even "factually intertwined," as required in *Peacock*.

ARC's claims with regard to its purchase proposal are separate and distinct from its claims to be a resident council: they do not represent the same case or controversy. The claims are separately maintainable and determinable without any reference to the facts alleged or contentions stated in or with regard to the other. The ARC claims do not grow out of "a common nucleus of operative fact" and the District Court should have declined to hear the post-judgment motions as requested by ARHA.

The Court of Appeals accurately determined that the resolution of ARC's subsequent claims "...were entirely irrelevant to the resolution of the underlying complaint." (App. to Pet. for Cert., 6a) This finding was substantiated by the fact that the determination of ARC's status as a resident council was determined pursuant to 24 C.F.R. §964.115 (1996) (App. to Pet. for Cert., 41a), whereas the review of its purchase proposal was pursuant to an entirely separate code section, to-wit, 24 C.F.R. §970.13.

ARC repeatedly argues that the District Court had supplemental jurisdiction to effectuate its decree. Although ARC artfully attempts to modify the facts of this litigation to

conform to its argument, the reality is that it sued ARHA to be determined the resident council at the affected project. The issue of whether or not ARHA wrongfully rejected ARC's subsequent proposal to buy the project required ancillary jurisdiction, which was lacking pursuant to the *Peacock* standard.

ARC asserts in its Petition that the Court of Appeals decision is "...contrary to the holdings of virtually every other Court of Appeals and contrary to the holdings of this Court...", yet cites no cases contrary to *Peacock v. Thomas*, 516 U.S. 349 (1996). The Court of Appeals' analysis of *Peacock* and as applied to the facts of this case are unassailable. ARC confuses supplemental powers with ancillary jurisdiction.

ARC recognizes this by not pointing out any error by the Court of Appeals in its *Peacock* analysis of the facts of this case (App. to Pet. for Cert., 7-8). The cases submitted by ARC (with the exception of *Chemical Leaman Tank Lines v. Aetna Casualty and Surety Co.*, 177 F.3d 210 (3d Cir. 1999)) predate the decision in *Peacock* and are hence of questionable applicability and speak to supplemental powers. Once ARHA fully complied with the District Court's Order, there was nothing to "supplement" and the court lacked jurisdiction, ancillary or otherwise.

In *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 381 (1974), this Court held that facts which were "...quite separate from the facts to be determined in the proposed suit..." were insufficient to confer ancillary jurisdiction. The right to receive an offer to purchase, although a predicate for making the offer, is wholly irrelevant to the merits and regulatory compliance of the

purchase proposal itself.

CONCLUSION

The decision of the Fourth Circuit Court of Appeals was squarely within the parameters set forth by this Court in *Peacock* and *Kokkonen*, the District Court having exceeded its jurisdiction beyond the scope of the initial case. For the foregoing reasons it is respectfully submitted that ARC's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Michael J. Weiser, Esq.
510 King Street, Suite 416
Alexandria, Virginia 22314
(703) 836-7003
Counsel for the Alexandria
Redevelopment and Housing
Authority